



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of waste Management

4 (New Administrative Regulation)

5 401 KAR 42:095. Lender Liability.

6 RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart I, [40 C.F.R. Part 281,]

7 42 U.S.C. 6991c

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-120

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet  
10 to develop and conduct programs that provide for the prevention, abatement, and control of  
11 contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to  
12 regulate underground storage tanks by requiring registration, minimum construction and  
13 performance standards, leak detection, recordkeeping, release reporting, corrective action,  
14 closure, financial responsibility, and other requirements to protect public health and the  
15 environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that  
16 implements federal requirements for UST systems. This administrative regulation establishes  
17 requirements for lender liability.

18 Section 1. Definitions. Definitions shall be as established in 40 C.F.R. 280.200.

19 Section 2. Participation in Management. Requirements for participation in management  
20 shall be as established in 40 C.F.R. 280.210.

1           Section 3. Ownership of an UST or UST system or facility or property on which a UST  
2 or a UST system is located. Criteria to prevent a holder from acquiring ownership status shall be  
3 as established in 40 C.F.R. 280.220.

4           Section 4. Operating a UST or a UST system. Criteria to prevent a holder from acquiring  
5 operator status for a UST or a UST system shall be as established in 40 C.F.R. 280.230.

6           Section 5. Extensions. (1) The holder of a UST system may request an extension to a  
7 deadline established by this administrative regulation or established by the cabinet in writing  
8 pursuant to this administrative regulation.

9           (2) The extension request shall be submitted in writing and received by the Underground  
10 Storage Tank Branch of the Division of Waste Management prior to the deadline.

11           (3) The cabinet may grant an extension, if the cabinet determines that an extension would  
12 not have a detrimental impact on human health or the environment.

401 KAR 42:095 approved for filing.

4/14/11

Date

Leonard K. Peters

Leonard K. Peters, Secretary  
Energy and Environment Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Cassandra Jobe  
Division of Waste Management  
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Frankfort, KY 40601  
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Email: Cassandra.Jobes@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements for lender liability.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to provide requirements for lender liability at UST facilities and to be consistent with the federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by referencing the federal regulations for lender liability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statute by establishing the requirements for lender liability.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation will affect lending institutions who take control of UST facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The lending institutions will not have to take any additional actions on top of those required by the federal regulations with which they already have to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There should not be any cost associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The benefits of complying with this administrative regulation will be the ability to work with the agency as opposed to the federal government regarding lender liability.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no additional cost to the agency for implementing this administrative regulation.

(b) On a continuing basis: There is no additional cost to the agency for implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented and enforced using funds from tank fees and grants from the US EPA.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There will not be a need to increase fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish or affect fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. The requirements for lender liability are the same for all lenders.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:095

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes   X   No       

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

40 C.F.R. 280 Subpart I, KRS 224.60-105

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year?

This administrative regulation will not cost the agency additional money.

(d) How much will it cost to administer this program for subsequent years?

This administrative regulation will not cost the agency additional money.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 280 Subpart I

2. State compliance standards.

KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate.

40 C.F.R. 280 Subpart I

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No. This administrative regulation imposes the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.